

(2) **ARBITRATION.**—Parties not subject to such a negotiation may determine, by arbitration in accordance with the provisions of chapter 8, the terms and rates and the division of fees described in paragraph (1).

(c) **LICENSE AGREEMENTS SUPERIOR TO COPYRIGHT ARBITRATION ROYALTY PANEL DETERMINATIONS.**—License agreements between one or more copyright owners and one or more operators of coin-operated phonorecord players, which are negotiated in accordance with subsection (b), shall be given effect in lieu of any otherwise applicable determination by a copyright arbitration royalty panel.

(d) **DEFINITIONS.**—As used in this section, the following terms mean the following:

(1) A “coin-operated phonorecord player” is a machine or device that—

(A) is employed solely for the performance of nondramatic musical works by means of phonorecords upon being activated by the insertion of coins, currency, tokens, or other monetary units or their equivalent;

(B) is located in an establishment making no direct or indirect charge for admission;

(C) is accompanied by a list which is comprised of the titles of all the musical works available for performance on it, and is affixed to the phonorecord player or posted in the establishment in a prominent position where it can be readily examined by the public; and

(D) affords a choice of works available for performance and permits the choice to be made by the patrons of the establishment in which it is located.

(2) An “operator” is any person who, alone or jointly with others—

(A) owns a coin-operated phonorecord player;

(B) has the power to make a coin-operated phonorecord player available for placement in an establishment for purposes of public performance; or

(C) has the power to exercise primary control over the selection of the musical works made available for public performance on a coin-operated phonorecord player.

(Added Pub. L. 100-568, §4(a)(4), Oct. 31, 1988, 102 Stat. 2855, §116A; renumbered §116 and amended Pub. L. 103-198, §3(b)(1), Dec. 17, 1993, 107 Stat. 2309; Pub. L. 105-80, §5, Nov. 13, 1997, 111 Stat. 1531.)

PRIOR PROVISIONS

A prior section 116, Pub. L. 94-553, title I, §101, Oct. 19, 1976, 90 Stat. 2562; Pub. L. 100-568, §4(b)(1), Oct. 31, 1988, 102 Stat. 2857, related to scope of exclusive rights in nondramatic musical works and compulsory licenses for public performances by means of coin-operated phonorecord players, prior to repeal by Pub. L. 103-198, §3(a), Dec. 17, 1993, 107 Stat. 2309.

AMENDMENTS

1997—Subsec. (b)(2). Pub. L. 105-80, §5(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows:

“(2) **ARBITRATION.**—Parties to such a negotiation, within such time as may be specified by the Librarian of Congress by regulation, may determine the result of the negotiation by arbitration. Such arbitration shall

be governed by the provisions of title 9, to the extent such title is not inconsistent with this section. The parties shall give notice to the Librarian of Congress of any determination reached by arbitration and any such determination shall, as between the parties to the arbitration, be dispositive of the issues to which it relates.”

Subsec. (d). Pub. L. 105-80, §5(2), added subsec. (d). 1993—Pub. L. 103-198, §3(b)(1)(A), renumbered section 116A of this title as this section.

Subsec. (b). Pub. L. 103-198, §3(b)(1)(B), (C), redesignated subsec. (c) as (b), substituted “Librarian of Congress” for “Copyright Royalty Tribunal” in two places in par. (2), and struck out former subsec. (b) which related to limitation on exclusive right if licenses not negotiated.

Subsec. (c). Pub. L. 103-198, §3(b)(1)(B), (D), redesignated subsec. (d) as (c), in heading substituted “Arbitration Royalty Panel” for “Royalty Tribunal”, and in text substituted “subsection (b)” for “subsection (c)” and “a copyright arbitration royalty panel” for “the Copyright Royalty Tribunal”.

Subsecs. (d) to (g). Pub. L. 103-198, §3(b)(1)(B), (E), redesignated subsec. (d) as (c) and struck out subsecs. (e) to (g) which provided, in subsec. (e), for a schedule for negotiation of licenses, in subsec. (f), for a suspension of various ratemaking activities by the Copyright Royalty Tribunal, and in subsec. (g), for transition provisions and retention of Copyright Royalty Tribunal jurisdiction.

EFFECTIVE DATE

Section effective Mar. 1, 1989, with any cause of action arising under this title before such date being governed by provisions as in effect when cause of action arose, see section 13 of Pub. L. 100-568, set out as an Effective Date of 1988 Amendment note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106, 501, 511, 801, 802, 803 of this title; title 18 section 2319.

[§ 116A. Renumbered § 116]

§ 117. Limitations on exclusive rights: Computer programs

(a) **MAKING OF ADDITIONAL COPY OR ADAPTATION BY OWNER OF COPY.**—Notwithstanding the provisions of section 106, it is not an infringement for the owner of a copy of a computer program to make or authorize the making of another copy or adaptation of that computer program provided:

(1) that such a new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner, or

(2) that such new copy or adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful.

(b) **LEASE, SALE, OR OTHER TRANSFER OF ADDITIONAL COPY OR ADAPTATION.**—Any exact copies prepared in accordance with the provisions of this section may be leased, sold, or otherwise transferred, along with the copy from which such copies were prepared, only as part of the lease, sale, or other transfer of all rights in the program. Adaptations so prepared may be transferred only with the authorization of the copyright owner.

(c) **MACHINE MAINTENANCE OR REPAIR.**—Notwithstanding the provisions of section 106, it is